

JUN 18 1998

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
 Washington, D.C. 20554

Federal Communications Commission  
 Office of Secretary

In the Matter of )  
 )  
 Petition of the Association for Local )  
 Telecommunications Services (ALTS) for a )  
 Declaratory Ruling Establishing Conditions )  
 Necessary to Promote Deployment of )  
 Advanced Telecommunications Capability )  
 Under Section 706 of the )  
 Telecommunications Act of 1996 )

CC Docket 98-78

**COMMENTS OF AMERITECH****I. Introduction**

In its Petition, ALTS seeks three rulings. First, ALTS asks the Commission to declare that the unbundling and resale obligations of Section 251 of the 1996 Act apply to any advanced telecommunications capability that may be deployed by an incumbent LEC ("ILEC"). Second, it asks the Commission to clarify that competitive local exchange carriers ("CLECs") can obtain, pursuant to Section 251, interconnection, unbundled loops and collocation, to enable such CLECs to provide telecommunications services using their own advanced telecommunications capabilities. Finally, ALTS asks the Commission to create new collocation rights for CLECs seeking to use ILEC investment in advanced telecommunications capability.

Although captioned a "Petition for Declaratory Ruling," ALTS' filing is simply an unauthorized late-filed pleading in the pending proceedings established to consider Petitions filed

by Ameritech, Bell Atlantic and US WEST<sup>1</sup> for relief authorized by Section 706 of the Telecommunications Act of 1996.<sup>2</sup> At the request of ALTS, the Common Carrier Bureau established a consolidated pleading cycle for these three BOC Petitions. Comments were due on April 6, and Reply Comments were due on May 6, 1998.<sup>3</sup> ALTS filed both comments and replies. Since no permission was requested to file an additional pleading, ALTS' Petition should be rejected as not timely filed or, if considered at all, deemed an *ex parte* in the dockets established for the BOC Petitions.

To the extent ALTS' Petition requests "clarification" or "confirmation" regarding a CLEC's rights under Section 251, Ameritech agrees that CLECs should continue to have interconnection rights, access to unbundled network elements and the ability to collocate equipment in ILEC space, to provide telecommunications services. However, as provided for in Section 252 of the Act, CLECs desiring such arrangements should negotiate interconnection agreements or enforce the terms of existing agreements using the state negotiation, arbitration and complaint procedures which exist and work today for that very purpose.

Finally, to the extent it demands new and special rights beyond those provided by Congress in the 1996 Act, ALTS' Petition should be rejected on policy as well as legal grounds. ALTS' proposals would discourage true facilities-based local exchange competition in advanced data services by increasing CLECs' reliance on the facilities of ILECs. In addition, ALTS argues

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<sup>1</sup> Petition of Ameritech Corporation to Remove Barriers to Investment in Advanced Telecommunications Capability, CC Docket No. 93-82, filed March 5, 1998 (hereinafter "Ameritech Petition"); Petition of Bell Atlantic for Relief from Barriers to Deployment of Advanced Telecommunications Service, CC Docket No. 98-11, filed January 26, 1998; Petition of US WEST for Relief from Barriers to Deployment of Advanced Telecommunications Services, CC Docket No. 98-26, filed February 25, 1998 (hereinafter collectively referred to as "BOC Petitions").

<sup>2</sup> Telecommunications Act of 1996, P. L. 104-104, Title VII, Section 706 (hereinafter "Section 706").

<sup>3</sup> Order, CC Docket Nos. 98-11, 98-26, 98-32, (D.A. 98-513) rel. March 16, 1998, ¶6.

for substantially increased regulation of advanced telecommunications capability - rather than deregulation, as Congress expressly required when it enacted Section 706. As such, ALTS' arguments should be rejected out of hand.

## **II. The Petition Is a Backdoor Attempt to Reargue Issues Raised in the BOCs' Petitions.**

A footnote in ALTS' Petition<sup>4</sup> indirectly acknowledges the existence of the Petitions on which the Commission has already taken a full and complete record, but fails to note that the pleading cycles established by the Commission have long since passed. This backdoor attempt to add material to the record is as transparent as it is late, because ALTS addresses issues raised squarely by the BOC Petitions and argued directly in the public comment. ALTS argues, for example, that "full and irrevocable implementation of (Sections 251 and 252) is a necessary condition to relief under Section 706,"<sup>5</sup> that "Section 706 does not create forbearance authority."<sup>6</sup> Though no legal issues raised in the BOC Petitions drew nearly as much public comment as these two points, ALTS casually offers a series of additional arguments<sup>7</sup> – more than a month after Reply Comments on this point were filed by ALTS and others.

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<sup>4</sup> Petition for the Association for Local Telecommunications Services (ALTS) for a Declaratory Ruling, filed May 27, 1998 (hereinafter "Petition"), at 5 (n. 3).

<sup>5</sup> Petition, at 10.

<sup>6</sup> Petition, at 33.

<sup>7</sup> Petition, at 10-17; 33-6.

In view of the extensive public comments already filed on the BOC Petitions,<sup>8</sup> fairness requires that ALTS' Petition be rejected as an unauthorized pleading, as provided by the Commission's rules.<sup>9</sup> To the extent that the Commission chooses nonetheless to consider any portion of ALTS' unlawful late-filed pleading, perhaps by treating it as an *ex parte* communication under its rules,<sup>10</sup> Ameritech offers the following substantive comments.

### **III. CLECs' Unbundling, Interconnection and Collocation Rights Should Continue To Be Enforced By Use of Existing Mechanisms.**

ALTS claims that the RBOCs have "hopes of using Section 706 to void their unbundling obligations for advanced technologies,"<sup>11</sup> alleging that "(e)ach pending RBOC Section 706 Petition asks the Commission to forbear from imposing the interconnection and unbundling requirements of Sections 251 and 252 on xDSL and other new data technologies".<sup>12</sup> Unfortunately, and consistent with its typical litigation practice, ALTS grossly mischaracterizes the relief requested by Ameritech. In fact, Ameritech asked the Commission to clarify that an affiliate which satisfies a set of modified separation requirements is not an incumbent LEC for

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<sup>8</sup> Comments on the BOC Petitions were filed by 54 parties -- including ALTS, and Reply Comments by 22 parties - including ALTS.

<sup>9</sup> The rules specify that "(a)dditional pleadings may be filed only if specifically requested or authorized by the Commission." 47 CFR § 1.45(c). The record does not show that ALTS' filing was either requested or authorized, nor that ALTS has moved the Commission for an extension of time to file the pleading as additional comments or replies in the proceedings on the BOCs' Section 706 Petitions, as required by 47 CFR § 1.46(a)-(c).

<sup>10</sup> See 47 CFR §§ 1.1200 *et seq.*

<sup>11</sup> Petition, at 17.

<sup>12</sup> Petition, at 14.

purposes of Sections 251 and 252.<sup>13</sup> Because the interconnection and unbundling requirements of Sections 251 and 252 apply by their terms only to ILECs,<sup>14</sup> Ameritech's Petition did not seek forbearance from their application. Although Ameritech did not seek such forbearance – since its current plans to deploy advanced telecommunications capability would be through a non-ILEC affiliate – Ameritech fully supports the forbearance relief requested by Bell Atlantic and U S West if they elect to deploy such capability through their incumbent LECs.

At bottom, ALTS confuses the purpose of providing access to the existing local exchange network, pursuant to Section 251 of the Act, with the need to encourage deployment of new advanced capability as envisioned by Section 706. Ameritech completely agrees with ALTS that CLECs are entitled to interconnection, access to existing unbundled network elements and collocation under the 1996 Act to provide telecommunications services using their own advanced telecommunications technologies. However, to the extent CLECs desire to use such measures in deploying these new technologies, they should continue to negotiate interconnection agreements providing for the arrangements they seek, as provided for in Section 252 of the Act.<sup>15</sup> A “Petition for Declaratory Ruling” under Section 706 is not the appropriate vehicle to achieve such purpose. Rather, CLECs should continue to employ the Act's negotiation and arbitration measures to pursue these rights – as they have successfully done to date. In fact, ALTS' sole attempt at alleging a “bad act” by Ameritech was ill-chosen, because it proves that the remedy provided by

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<sup>13</sup> These proposed separation requirements include (1) maintaining separate books of accounts, (2) not jointly owning transmission or switching facilities with the LEC, and (3) acquiring any services from its affiliated LEC at tariffed rates, terms and conditions. Ameritech Petition, at 19.

<sup>14</sup> 47 U.S.C. § 251(c)(2), (3); § 252(j).

<sup>15</sup> 47 U.S.C. § 252(a)-(c).

Congress works precisely as intended; the party invoking the arbitration process secured the interconnection arrangement it sought.<sup>16</sup>

ALTS' arguments that the ILECs "are using litigation"<sup>17</sup> to somehow forestall competition in advanced telecommunications capability are preposterous. Despite a hollow remark that "no one denies that the ILECs have a right to seek judicial resolution of legitimately open issues",<sup>18</sup> the Petition complains about numerous federal court decisions which are thus far adverse to ALTS's desires.<sup>19</sup> For example, ALTS complains at length -- inserting a footnote over a page long -- that pending litigation regarding reciprocal compensation for internet traffic is "focused ... on harassing competitors and delaying implementation of the Act's local competition provisions".<sup>20</sup> In light of the Commission's pending proceeding (and ongoing legislative activity) on this complex subject, it is ludicrous to argue that the thorny questions inherent in this topic are anything other than "legitimately open issues".

#### **IV. ALTS' Proposals Are Internally Inconsistent and Contrary To the Act.**

The Petition recommends several actions which are logically inconsistent as well as contrary to the pro-competitive, deregulatory public policy embodied by Congress in the 1996 Act. For the reasons discussed in this Section, the Commission should reject the Petition out of hand.

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<sup>16</sup> Petition, at 12. ALTS's Petition omits the fact that Intermedia Communications Inc., which successfully petitioned three state commissions for arbitration under Section 251, now has an interconnection agreement with Ameritech providing for the frame relay interconnection arrangement it sought.

<sup>17</sup> Petition, at 26-32.

<sup>18</sup> Petition, at 30.

<sup>19</sup> Petition, at 26-32.

<sup>20</sup> Petition, at 30.

The Petition's logical inconsistency is best demonstrated by ALTS' claim – which Ameritech takes as accurate and truthful – that its members are far ahead of the ILECs in terms of deploying advanced telecommunications capability. According to ALTS, “CLECs are bringing advanced telecommunications capability to the public today,”<sup>21</sup> and “ILECs have begun to react to these actions taken by their new competitors”.<sup>22</sup> Obviously, the ILECs cannot be “monopoly suppliers”<sup>23</sup> of new advanced telecommunications services if ILEC deployment is a competitive response to existing CLEC capability.<sup>24</sup> Likewise, how can facilities not yet deployed by ILECs be a “bottleneck”<sup>25</sup> in any sense of the word? The Petition provides no patches for these gaping flaws in its logic, because there are none. Nor is there any need for the Commission to require that new ILEC investment in advanced telecommunications capability be made available to CLECs pursuant to the provisions of Section 251(c)(3) or (4).

On the contrary, it is obvious from a policy standpoint, that ALTS' proposals would have a result directly opposite that envisioned by Congress when it included Section 706 in the 1996 Act. Section 706 is intended to create incentive for investment in new advanced infrastructure deployment, by all carriers – both incumbent and new. Facilities-based competition based on advanced telecommunications capability -- upon which “CLEC investors have risked enormous amounts of capital, and supported CLEC efforts to deploy these advanced services in hundreds of

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<sup>21</sup> Petition, at 6.

<sup>22</sup> Petition, at 5.

<sup>23</sup> Petition, at 3.

<sup>24</sup> ALTS recitation of facts showing that “the reach of CLEC broadband networks has expanded exponentially” (Petition, at 7) is disingenuous, in that it supports the need for forbearance as shown by the BOC Petitions.

<sup>25</sup> Petition, at 5.

markets in only a few years' time"<sup>26</sup> -- would cease, or at least slow, in favor of CLEC use of the ILECs' investment in the same advanced capabilities. What other result would ALTS expect if these eager CLEC investors were given the choice of either risking their own capital or risking that of the ILECs -- at TELRIC rates amounting to a 50-60% discount below actual costs? To argue that such measures are good policy because they would "foster competition in advanced services"<sup>27</sup> is patently absurd. The exact opposite is true.

The Petition also runs counter to the deregulatory encouragement of new investment by Section 706 of the Act. Instead of serving Congress' express deregulatory pro-investment purpose of Section 706, ALTS' proposals would heap layer after new layer of regulation upon this emerging marketplace and further discourage new investment. ALTS urges the Commission to identify a "list of pro-competitive requirements that are necessary for effective competition ... . The task for the Commission is first to create the list, and then to assume leadership on those items within its control."<sup>28</sup> Similarly, ALTS exhorts the Commission to "consider incorporating many of the pro-competitive actions undertaken by State commissions into its own arsenal for enhancing competition,"<sup>29</sup> and to adopt and enforce a new set of ten collocation requirements.<sup>30</sup>

As the Petition obliquely acknowledges,<sup>31</sup> forbearance from enforcement of existing regulations is one of the means via which regulators are authorized by Section 706 to encourage

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<sup>26</sup> Petition, at 4.

<sup>27</sup> Ibid.

<sup>28</sup> Petition, at 4.

<sup>29</sup> Petition, at 7.

<sup>30</sup> Petition, at 21-2.

<sup>31</sup> Petition, at 10.



deployment of advanced telecommunications capability to the American public. Instead of using this authorized deregulatory mechanism (as espoused in various ways by the BOC Petitions), ALTS asks the Commission to develop and engraft a brand new “checklist” requirement upon those in the Act, demanding that the Commission “resolve that requests for regulatory forbearance made pursuant to Section 706 will not be considered until the ILEC seeking relief has fully implemented Section 251(c) and, if applicable, Section 271”.<sup>32</sup> Ameritech submits that additional regulation cannot and will not facilitate the “open and unbridled competition”<sup>33</sup> which ALTS claims to favor while seeking new regulatory advantages for its members.

#### **V. Conclusion**

For the foregoing reasons, Ameritech requests that the Commission reject the ALTS Petition in its entirety as an unauthorized late-filed pleading on the BOC Petitions. To the extent the Commission elects to consider any portion of this late-filed pleading, the Commission should reject ALTS’ calls for new procedural rights and substantive declarations, and declare

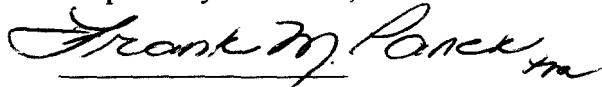
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<sup>32</sup> Petition, at 36.

<sup>33</sup> Petition, at 3.

instead that the established negotiation, arbitration and complaint procedures should continue to be used to resolve any interconnection and unbundling disputes relating to advanced telecommunications capability. As ALTS' recommendations represent bad telecommunications policy contrary to the Act in general, and Section 706 in particular, they should be summarily rejected.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Frank M. Panek", written over a horizontal line.

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Dated: June 18, 1998